IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 687 of 2001

with

SPECIAL CIVIL APPLICATION No 7377 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

MANIBHAI RANJITBHAI MAKWANA C/O AHMEDABAD MILL MAZDOOR

Appearance:

1. Special Civil Application No. 687 of 2001

MR MITUL K SHELAT for Petitioner No. 1

MR CB DASTOOR for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/12/2001

ORAL JUDGEMENT

These are cross petitions under Article 227 of the Constitution for challenging the judgment and award

dated 2-8-2000 passed by the Labour Court, Ahmedabad in Reference (LCA) No.1070 of 1996 by which the Labour Court set aside the penalty of dismissal passed by the Gujarat State Road Transport Corporation against Manibhai Ranjitbhai Makwana (hereinafter referred to as `the workman') who was working as Fitter Helper under the Corporation and substituted the same by penalty of simple discharge with a further direction that over and above the gratuity and provident fund, the Corporation shall also pay the workman Rs.50,000/- in lieu of reinstatement.

2. The workman was employed by the Corporation on the post of Fitter Helper. A departmental inquiry was held against the workman on the charge that the workman had with an intent to commit theft, hidden three angles of the Corporation worth Rs.300/- at another place. Ultimately, the workman came to be dismissed by the order dated 1-2-1994. In the reference before the Labour Court, the workman admitted the legality of the inquiry, but challenged the finding of the disciplinary authority. However, in view of the admission made by the workman himself in writing on 19-10-1993 that he had concealed the angles in question, the Labour Court held that the finding of the employer was not without any basis. The workman claimed the benefit of discretionary power of the Labour Court under section 11A of the Industrial Disputes Act. The employer contended that in view of the gravity of the misconduct and also in view of the fact that the workman had earlier committed 12 defaults in the past, the penalty of dismissal imposed by the Corporation was proper. The Labour Court, however, held that the penalty of dismissal was disproportionate and harsh and was required to be substituted by the penalty of simple discharge knowing fully well that under simple discharge the workman would get the benefits of gratuity, provident fund and other benefits. But the Labour Court went further and awarded a sum of Rs.50,000/- to the workman in lieu of reinstatement. It is that part of the award regarding payment of Rs.50,000/- which is under challenge in Special Civil Application No.687 of 2001.

3. On the other hand, the workman has challenged the award in Special Civil Application No. 7377 of 2001 contending that the Labour Court ought to have directed the Corporation to reinstate the workman with continuity of service.

4. Mr Mitul Shelat learned counsel for the Corporation has vehemently submitted that when the charge of attempt to commit theft was proved against the

workman, there was no justification for interfering with the penalty of dismissal and in any case even if dismissal was too harsh and was required to be substituted by penalty of simple discharge, the Labour Court ought not to have awarded the sum of Rs.50,000/- in lieu of reinstatement when the finding about the guilt of the respondent delinquent was already proved at the departmental inquiry and was not faulted by the Labour Court. The learned counsel for the Corporation has placed heavy reliance on the decisions of the Apex Court in the case of Janatha Bazar vs. Secretary, Sahakari Naukarara Sangh, AIR 2000 SC 3129, in the case of U.P. State Road Transport Corporation vs. Subash Chandra Sharma, AIR 2000 SC 1163, and also on the decision of the Apex Court in Karnataka State Road Transport Corporation vs. BS Hullikatti in 2001 (2) SCC 574.

5. Mr Dastoor learned counsel for the workman submitted that the writing dated 19-10-1993 was misconstrued by the disciplinary authority as well as by the Labour Court. The angles in question were removed at the instance of Mr Solanki, the Head Fitter. Moreover, the angles in question were not removed outside the premises of the Corporation but they were only shifted to another place. Hence there was no fault on the part of the workman and therefore he was entitled to be reinstated in service.

6. Having heard the learned counsel for the parties, it appears to the Court that when the legality of the inquiry was not challenged before the Labour Court and when the workman himself had admitted on 19-10-1993 that he had concealed the angles with a view to facilitating removal thereof and even the Labour Court did not disturb the finding of the disciplinary authority that the workman was guilty of charge of attempt to commit theft and the Labour Court held that the workman could not be trusted, it cannot be said that the Labour Court committed any jurisdictional error or any error apparent on the face of the record in not directing the Corporation to reinstate the workman. Hence the grievance made on behalf of the workman is not at all justified. On the contrary, the Labour Court exercised its discretion under section 11A of the ID Act and granted the workman indulgence of converting the penalty from dismissal into simple discharge so as to enable the workman to get benefits like gratuity, provident fund contributions and other retiral benefits available to the workman under the Rules.

7. As regards the contention of Mr Dastoor for the

workman that the misconduct in question was done at the instance of Mr Solanki, the Head Fitter and that, therefore, the workman was entitled to be exonerated from the charge levelled against him does not appear to be borne out from the award of the Labour Court. No such contention appears to have been raised before the Labour Court. Hence, in this petition under Article 226/227 it is not possible for the Court to entertain such a contention.

It is, however, clarified that the disposal of this petition does not preclude the petitioner-Corporation from holding a further inquiry into the incident in question and taking any action against the person at whose instance (as the workman contends) the workman had committed the misconduct in question. If such an inquiry is held, obviously the workman herein will be called as a witness. In any case, it is the workman's case that he had removed the angles in question knowing full well that the angles were being removed at another place with the ultimate idea of having them removed for private purposes. Even if it was done at the instance of another person, the fact that it was done by the workman herein is sufficient to stigmatize his conduct as an act of misconduct.

8. Coming to the grievance made on behalf of the Corporation, the Labour Court was not at all justified in giving direction to the Corporation to pay the workman Rs.50,000/- in lieu of reinstatement when according to the Labour Court itself reinstatement was not justified. In view of the aforesaid decisions of the Apex Court in Janatha Bazar vs. Secretary, Sahakari Naukarara Sangh (supra) and Karnataka State Road Transport Corporation vs. BS Hullikatti (supra), the sympathy shown by the Labour Court was absolutely misplaced. There was no question of paying any compensation to the workman in lieu of reinstatement when he was found to be guilty of having made an attempt to commit theft which warranted his being discharged from service as held by the Labour Court itself. The conversion of the penalty of dismissal into that of simple discharge in order to enable the workmen to get his retiral dues like P.F., Gratuity, etc. was sufficient indulgence granted by the Labour Court in favour of the workman. No further indulgence was called for by awarding the workman Rs.50,000/- in lieu of reinstatement when the reinstatement itself was not justified in the first place.

9. In view of the above discussion, Special Civil Application No. 687 of 2001 filed by the Gujarat State

Road Transport Corporation is partly allowed. While the order of the Labour Court converting the order of penalty of dismissal into simple discharge is not disturbed, the direction given by the Labour Court for paying the workman Rs.50,000/- in lieu of reinstatement is hereby quashed and set aside.

Special Civil Application No. 687 of 2001 is accordingly partly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

10. As far as Special Civil Application No.7377 of 2001 is concerned, in view of the above discussion, the same is dismissed. Rule is discharged with no order as to costs.

11. At this stage, Mr Dastoor makes a request that the operation of this order may be stayed for two weeks.

The request is rejected.

(M.S. Shah,J)

zgs/-